

From: (b)(6),(b)(7)(C)
To:
Subject: Fwd: [EXTERNAL] MBTA/heron rookery/timber harvest
Date: Wednesday, June 13, 2018 8:40:03 AM

Just in case this pops up as a complaint for you guys there in Michigan. I agree it does not sound like something that violates the MBTA due to M-opinion.

----- Forwarded message -----

From: (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@fws.gov>
Date: Wed, Jun 13, 2018 at 7:24 AM
Subject: Fwd: [EXTERNAL] MBTA/heron rookery/timber harvest
To: (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@fws.gov>, (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@fws.gov>, (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@fws.gov>

----- Forwarded message -----

From: **Kershner, Eric** <eric_kershner@fws.gov>
Date: Tue, Jun 12, 2018 at 8:14 PM
Subject: Re: [EXTERNAL] MBTA/heron rookery/timber harvest
To: (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@fws.gov>
Cc: (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@fws.gov>, (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@michigan.gov>, (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@michigan.gov>, (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@fws.gov>

Folks,

(b)(6),(b)(7)(C) interpretation is correct. First, no permit is needed for cutting trees down with inactive nests (those nests without viable eggs or chicks in them) as long possession of the nests does not occur.

The recent M-Opinion also removes the prohibition to removing trees with active nests as long as the intent of the action is the cutting of the trees (in this case for timber harvest). Therefore, if during the action of cutting trees down for timber harvest nests and their contents are destroyed - under the new M-Opinion, this is not an enforceable prohibition.

With that said, we certainly are seeking ways to achieve conservation outcomes while conducting lawful actions. There are several actions here that could be voluntarily employed if the action proponent would like to be a good conservation steward and partner. For example, if the timber cut could wait, that would be a best scenario to protect the nest contents from destruction. Or the action proponent could employ the Good Samaritan provision, which allows the collection and possession of nest contents to be transferred to a rehabilitation facility for rearing and release for those nests that are in imminent danger of destruction from the tree cutting.

To be clear, these recommendations are strictly voluntary and are not required in any way under the MBTA. The new M-Opinion provides a legal approach to cutting the trees even is the nest contents will be destroyed.

Hope this helps.

Eric

Eric L. Kershner
Chief, Branch of Conservation, Permits, and Regulations
US Fish & Wildlife Service Headquarters
Division of Migratory Bird Management
[5275 Leesburg Pike](#)
[Falls Church, VA 22041-3803](#)
eric_kershner@fws.gov
703-358-2376 (office)

(b)(6),(b)(7)(C) (cell)

On Tue, Jun 12, 2018 at 8:13 AM, (b)(6),(b)(7)(C) [@fws.gov](mailto:(b)(6),(b)(7)(C)@fws.gov)> wrote:

All:

Good morning.

The attached that (b)(6),(b)(7)(C) provided is the latest we have seen from HQ.

In this scenario, it appears that the intent and purpose of the activity is to harvest trees, not to take MBTA birds, nests, or eggs; the guidance memo states that the MBTA prohibitions apply when the purpose of an action is to take migratory birds, nests, or eggs.

I see this as incidental take per the M Opinion released last December;

<https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf>

I am "cc'ing" our policy/branch chief, Eric Kershner, and will also ask Eric to confirm.

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

Permits Chief

U.S. Fish & Wildlife Service
Migratory Bird Permit Office
[5600 American Blvd West, Suite 990](#)
[Bloomington, MN 55437-1458](#)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

[@fws.gov](#)

On Mon, Jun 11, 2018 at 6:50 PM,

(b)(6),(b)(7)(C)

[@fws.gov](#) wrote:

Hi (b)(6),(b)(7)(C)

and (b)(6),(b)(7)(C)

Thanks for reaching out to me with your question. I have copied our Permits Chief, (b)(6),(b)(7)(C) to weigh in on whether removal of trees containing nests after they are no longer occupied would require a permit. I appreciate that you are trying to avoid impacts/take of birds while they are actively nesting!

I have also attached a memo that we received from our HQ office clarifying the current interpretation of the MBTA under this administration. We do not have a mechanism in place for permitting incidental take - only lawful intentional take. A group of conservation organizations did file a lawsuit last month to restore the protections/interpretation that was in place previously, so we'll see what happens...

I hope this helps - feel free to follow up at any time :-)

(b)(6),(b)(7)(C)

Migratory Bird Biologist

US Fish and Wildlife Service
[3090 Wright St.](#)
Marquette, MI 49855
Phone: (b)(6),(b)(7)(C)
Fax: (b)(6),(b)(7)(C)
Email: (b)(6),(b)(7)(C) [@fws.gov](#)

[Connect on LinkedIn](#)

--Dedicated to building a more sustainable, compassionate, and connected human community

On Mon, Jun 4, 2018 at 1:42 PM, (b)(6),(b)(7)(C) (DNR)

(b)(6),(b)(7)(C) @michigan.gov> wrote:

Hi (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) called me today about a great blue heron rookery in one of our timber harvests. The loggers spotted the rookery and have stopped all activities. We're wondering if you know of any guidelines for something like this? To the best of my knowledge we don't have anything in place that addresses this situation. One specific question that will be asked is "can they cut down the trees once the birds are no longer using the rookery?" Plus, I can't remember if the proposed MBTA policy change about incidental take is in effect or just proposed?

Thanks and hope all is well,

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

Endangered Species Coordinator

Michigan DNR, Wildlife Division

P.O. Box 30444

[525 W. Allegan](#)

[Lansing, MI 48909-7944](#)

Office: (b)(6),(b)(7)(C)

Show your support for conserving wildlife habitat in Michigan by purchasing the [wildlife habitat license plate](#) or [Simply make a tax-deductible donation!!!](#)